

K&L GATES

May 12, 2025

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Via ECF

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Hon. Valerie Figueredo
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *Brian Joseph Gref v. American International Industries, Inc., et al.*
Case No.: 1:20-cv-05589-GBD-VF
Reply in Response to AII's Personal Attacks

Dear Judge Figueredo:

Beginning in March 2024, AII's participation in this lawsuit became voluntary. It had been offered a full dismissal with prejudice. In July 2024, all reliance on all Moline articles was withdrawn. The question before the Court is whether, from March 2024 forward, AII complied with its obligation to take reasonable steps to avoid imposing undue burden or expense on Northwell. Fed. R. Civ. P. 45(d)(1). It did not.

In its Response, AII does not identify a single step that it took during this timeframe to protect Northwell from undue expense. (ECF No. 472) Nor does it deny being on notice that it was continuing to inflict expenses on Northwell. *Id.* In fact, AII leaves nearly all Northwell's factual allegations un rebutted. Thus, the record on this motion is now clear: from March 2024 through present, AII did not comply with its obligations under Rule 45. The Court should enforce Rule 45 and impose an appropriate sanction. *Id.*; *Breaking Media, Inc. v. Jowers*, No. 21 MISC. 194 (KPF), 2021 WL 1299108, at *7 (S.D.N.Y. Apr. 7, 2021) (recognizing that Rule 45 requires sanctions where undue burden is imposed and awarding attorneys' fees and expenses incurred in responding to a subpoena).

In addition, the Court should disregard as irrelevant and unhelpful nearly all the factual allegations in AII's Response. Rather than addressing facts bearing on the Rule 45 analysis and the timeframe at issue in this motion (March 2024 through present), AII spends pages and pages making factual allegations that relate to the merits of the now-dismissed lawsuit or to a *Daubert* motion that was never litigated (because reliance on all Dr. Moline articles was withdrawn). These facts were the subject of dispute among the parties to this case, not Northwell. *See* ECF Nos. 448, 457. Northwell is not a party and takes no position on the merits of the lawsuit.

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Finally, Northwell vehemently denies AII's attacks on its integrity. Lacking any meritorious defense, AII resorts to accusing Northwell of "perpetuat[ing] fraud" on the Court (ECF No. 472, p. 2), "acting in bad faith" (*id.* at pp. 10, 15), "[g]amesmanship" (*id.* at p. 13), "mislead[ing] . . . the courts" (*id.* at p. 15), and "deceit" (*id.* at p. 15). AII even makes a personal attack on the ethics of counsel, accusing "counsel for Northwell" of not being "candid with the Court." (*Id.* at p. 15). Let that sink in: because it disagrees with Northwell's legal argument on Rule 45, AII accuses *opposing counsel* of violating the rules of professional responsibility. This is a desperation tactic. It is immature and unprofessional. It is beneath this Court. The Court should issue an appropriate sanction.

Thank you for your time and attention to this matter.

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cc: All counsel of record (via ECF)